

## Chapter 12-2 Landlord-Tenant Relations

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Boulder Revised Code, 1981

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Adopted by Ordinance No. 4957.

### 12-2-1 Legislative Intent.

The purpose of this chapter is to supplement the provisions of state law governing the rights and duties of landlords and tenants of residential property in the city.

### 12-2-2 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

"Bank" means a bank, credit union, or similar institution that accepts deposits of money and insures such funds through the Federal Deposit Insurance Corporation, the National Credit Union Association, or similar institution.

"Interest" means simple interest on the full amount of the security deposit on deposit.

"Security deposit" means any advance or deposit of money, regardless of its denomination, the primary function of which is to secure the performance of a rental agreement for residential premises or any part thereof.

Ordinance No. 7320 (2004).

### 12-2-3 Leases to be Provided.

Any person renting residential property for thirty days or more shall enter into a written lease relating to such rental within thirty days of the commencement of such rental, and the lessor shall provide a copy of such lease to each lessee thereof within seven working days of final execution of the lease or within fifteen working days of the signature thereof by any lessee, whichever is sooner. Prior to issuance of a summons and complaint under this section, the complaining witness or a peace officer of the city must first request a copy of the lease, and the person renting the residential property shall have five working days from the date of mailing or personal delivery of such request to provide a copy of the lease.

Ordinance No. 4969 (1986).

### 12-2-4 Written Disclosures Required.

No operator shall allow any person to occupy a rental property as a tenant or lessee or otherwise for valuable consideration unless and until that operator has satisfied each of the following conditions:

(a) The operator has executed and provided to the tenant a copy of a written lease, rental agreement, set of site rules, or other written instrument containing the following information:

(1) The maximum occupancy levels permitted in the rental unit;

(2) Notice of the provisions contained in Sections 5-3-11, "Nuisance Party Prohibited," 5-6-6, "Fireworks," and Chapter 5-9, "Noise," B.R.C. 1981;

(3) Notice of the provisions contained in Sections 6-2-3, "Growth or Accumulation of Weeds Prohibited," 6-3-3, "Trash Accumulation Prohibited," paragraph 7-6-13(a)(1), concerning parking prohibited on sidewalks, and Section 8-2-13, "Duty to Keep Sidewalks Clear of Snow," B.R.C. 1981, relating to the responsibility of every owner, manager, or operator of rental property to maintain a valid contract with a commercial trash hauler providing for the removal of accumulated trash from the property;

(4) The names of those individuals permitted, pursuant to the tenancy agreement, to occupy the rental unit;

(5) Notification to tenants that violation of the city's noise regulation requirements or residency within the rental unit of persons other than those lawfully occupying the unit pursuant to the tenancy agreement is cause for the termination of the tenancy; and

(6) Notification that interest must be paid to tenants upon any security deposit collected pursuant to the provisions of Sections 12-2-2, "Definitions," and 12-2-7, "Interest Rate on Security Deposits," B.R.C. 1981.

(b) The city manager shall approve a form that, if fully executed, will satisfy the requirements of subsection (a) of this section. Use of the approved form shall not be mandatory and individual operators may utilize other writings in lieu of such form so long as those writings satisfy the requirements of subsection (a).

(c) The operator has established and maintained an accurate listing of the identities of each of the persons who are authorized to reside in the subject rental unit.

(d) The maximum penalty for any violation or violations of this section that are charged as part of a single court proceeding shall be \$500.00.

Ordinance Nos. 7158 (2002); 7320 (2004).

#### 12-2-5 Ownership of Security Deposit and Payment of Interest.

Any security deposit for residential property subject to regulation under state law shall be and remain the sole property of the tenant advancing same, and such security deposit plus interest shall not be retained by the person having custody of it after the termination of the tenancy except for actual cause, pursuant to the provisions of state law dealing with retention of security deposits. This section does not create a fiduciary relationship between the parties, but creates a duty to account for interest upon the termination of the tenancy.

Ordinance No. 7158 (2002).

#### 12-2-6 Return of Accrued Interest - Enforcement.

(a) No person having custody of a security deposit for residential property shall fail to return accrued interest on the security deposit within one month after termination of the lease or surrender and acceptance of the premises, whichever occurs last, and according to the provisions of state law concerning the return of the related security deposit, notice of any deductions therefrom, and the legality of such deductions. Any additional accrued interest shall be returned at the time of the return of the related security deposit, subject to the same provisions of state law.

(b) Failure of any person having custody of a security deposit to provide the same notice required by state law for the retention of a security deposit with respect to the interest thereon shall work a forfeiture of such person's right to withhold any portion of the interest.

(c) The willful and wrongful retention of interest on a security deposit in violation of this chapter shall render the person having custody of the security deposit liable to the tenant for \$100.00 or treble the amount so retained, whichever is greater, together with reasonable attorneys' fees and court costs; except that the tenant has the obligation to give notice to such persons of the tenant's intention to file legal proceedings a minimum of seven days prior to filing the action.<sup>1</sup>

(d) In any court action brought by a tenant under this chapter, the person having custody of the security deposit shall bear the burden of proving that retention of the interest on a security deposit or any portion thereof was not in violation of this chapter.

(e) Nothing in this chapter shall preclude a tenant from filing a claim under Part 1, Article 12, Title 38, C.R.S., and a claim under this chapter in the same lawsuit.

(f) This section and Section 12-2-5, "Ownership of Security Deposit and Payment of Interest," B.R.C. 1981, do not apply to any security deposit paid to a mobile home park on account of the lease of a mobile home space.

<sup>1</sup>If a landlord deliberately fails to return a security deposit during the additional seven-day notice period set forth in the State Security Deposit Act, Section 38-12-103(3)(a), C.R.S., the retention of the deposit is "willful" under the State Act. *Turner v. Lyon*, 539 P.2d 1241 (Colo. 1975).

Ordinance Nos. 4969 (1986); 7158 (2002).

#### 12-2-7 Interest Rate on Security Deposits.

(a) The rate of interest to be paid upon the refund of security deposits shall be determined by the manager by averaging the interest rates being paid on one-year certificates of deposit by three banks doing business within the city that, in the view of the manager, provide indicia of being significant participants in the local banking industry. This average interest rate will be calculated as of December 15 of each year or, if that date falls on a weekend or holiday, on the first business day thereafter. The manager's determination of the rate shall be final. The rate shall be published in a newspaper of general circulation or posted on a city internet site that is accessible to members of the general public. The average interest rate so determined shall be rounded no more than two places to the right of the decimal point. It shall become

the rate of interest paid on any security deposit that is provided to a landlord during the calendar year starting on January 1 of the year immediately following the date of the manager's determination.

(b) For the year 2004, the rate of interest shall be determined by the manager using the method set forth in Subsection 12-2-7(a), B.R.C. 1981, within ten days of March 19, 2004. Within three days of that determination, the interest rate so determined shall be published or posted and shall, thereafter, apply to any security deposit provided to a landlord as a consequence of a lease or rental agreement that is entered into after the date on which the manager's determination is published or posted. In every subsequent year, the manager's determination shall be made pursuant to the provisions of Subsection 12-2-7(a), B.R.C. 1981.

(c) Interest on security deposits for multi-year tenancies shall be calculated separately each year of tenancy in the manner provided in this section. The manager shall retain and make available a list of all prior year interest rates and shall provide a standard formula for the calculation of interest rates on multi-year tenancies.

(d) Payments of interest on security deposits made pursuant to lease or rental agreements entered into prior to March 19, 2004, shall be paid at the rate of five and one-half percent per annum simple interest on the full amount of the security deposit.

Ordinance No. 7320 (2004).

12-2-8 Waiver Void.

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this chapter is waived shall be deemed to be against public policy and shall be void.

Ordinance No. 7158 (2002).

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